

DEPARTMENT OF STATE REVENUE

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**LETTER OF FINDINGS NUMBER: 96-0491 CS
Controlled Substance Excise Tax
For Tax Period: July 30, 1992**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5

Taxpayers protest the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On July 30, 1992, a search warrant was executed on taxpayers' (Husband and Wife) home. The warrant was based on an aerial search which identified 18 marijuana plants growing near the taxpayers' residence. The taxpayers were arrested on August 2, 1992. The controlled substance excise tax was issued against the taxpayers for marijuana found in their home and outside near their residence. Taxpayers protest this assessment. Additional information will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code section 6-7-3-5 provides for the imposition of the controlled substance excise tax on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayers protest the imposition of the controlled substance excise tax as it was based upon the weight of all the marijuana seized. Taxpayers claim the marijuana plants growing outside were not on their property and they should not be assessed the controlled substance excise tax on those plants. To support their contention the taxpayers submit a copy of a Negotiated Plea Agreement made with the Monroe County prosecutor's office. The Negotiated Plea Agreement, dated March 31, 1993, includes the statement:

The parties anticipate that the defendant will indicate possession of marijuana in his home only, and thus, failure to pay excise tax upon marijuana kept in his home; the defendant will not admit possession of marijuana allegedly growing near his home in an adjacent field.

Taxpayers also submit a signed, sworn affidavit taken during their criminal prosecution which states the taxpayers possessed less than thirty grams of marijuana. Taxpayers argue the acceptance of these documents by the Monroe County Prosecutor's Office is evidence they should not be held liable for the controlled substance excise tax on the marijuana plants growing in a field next to their property.

The Department finds the taxpayers were not in possession of the marijuana growing on property adjacent to theirs. Without possession the controlled substance excise tax is not applicable. Taxpayers are liable for the marijuana found in their home and in their possession. A cardboard box containing marijuana was found in the taxpayers' garage. A separate weight was made of the marijuana found in this box and totaled 48.5 grams. Taxpayers are responsible for the controlled substance excise tax for the 48.5 grams of marijuana found in their possession.

FINDING

Taxpayers' protest is sustained in part and denied in part. Taxpayers remain liable for the controlled substance excise tax based on the amount of controlled substances found in their possession.